

Executive Office for Immigration Review, Justice

§ 1244.1

deportation is final and subject to execution upon the date when any of the following occurs:

(1) A grant of voluntary departure expires;

(2) An immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives his or her right to appeal;

(3) The Board of Immigration Appeals enters an order of deportation on appeal, without granting voluntary departure or other relief; or

(4) A Federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, provided that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by the Service at the time of issuance of the final order.

[62 FR 10378, Mar. 6, 1997, as amended at 65 FR 82256, Dec. 28, 2000]

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

Sec.

1244.1 Definitions.

1244.2 Eligibility.

1244.3 Applicability of grounds of inadmissibility.

1244.4 Ineligible aliens.

1244.5 Temporary treatment benefits for eligible aliens.

1244.6 Application.

1244.7 Filing the application.

1244.8 Appearance.

1244.9 Evidence.

1244.10 Decision by the director or Administrative Appeals Unit (AAU).

1244.11 Renewal of application; appeal to the Board of Immigration Appeals.

1244.12 Employment authorization.

1244.13 Termination of temporary treatment benefits.

1244.14 Withdrawal of Temporary Protected Status.

1244.15 Travel abroad.

1244.16 Confidentiality.

1244.17 Annual registration.

1244.18 Issuance of charging documents; detention.

1244.19 Termination of designation.

1244.20 Waiver of fees.

AUTHORITY: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

SOURCE: Duplicated from part 244 at 68 FR 9841, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1244 appear at 68 FR 9846, Feb. 28, 2003, and 68 FR 10357, Mar. 5, 2003.

§ 1244.1 Definitions.

As used in this part:

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

§ 1244.2

8 CFR Ch. V (1–1–08 Edition)

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Foreign state means any foreign country or part thereof as designated by the Attorney General pursuant to section 244 of the Act.

Misdemeanor means a crime committed in the United States, either:

(1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term “felony” of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Prima facie means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

Register means to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration

period designated under section 244(b) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997, as amended at 63 FR 63595, Nov. 16, 1998; 64 FR 4781, Feb. 1, 1999]

§ 1244.2 Eligibility.

Except as provided in §§1244.3 and 1244.4, an alien may in the discretion of the director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 1244.3;

(e) Is not ineligible under § 1244.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or

(2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1999, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1998.